

Simon Franzini (Cal. Bar No. 287631)  
simon@dovel.com  
Martin Brenner (Cal. Bar No. 333540)  
martin@dovel.com  
Grace Bennett (Cal. Bar No. 345948)  
grace@dovel.com  
DOVEL & LUNER, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, California 90401  
Telephone: (310) 656-7066  
Facsimile: (310) 656-7069

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SHARON CROWDER, JOEL LUMIAN,  
ROBERT SMITH, AMANDA  
GOLDWASSER, and MARK ELKINS, each  
individually and on behalf of all others  
similarly situated,

*Plaintiffs,*

V.

## THE SHADE STORE, LLC

*Defendant.*

Case No. 5:23-cv-02331-NC

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS THIRD AMENDED  
COMPLAINT**

Hearing Date: March 12, 2025

Time: 11:00 a.m.

Courtroom: Courtroom 5, 4th Floor

Hon. Nathanael M. Cousins

**Table of Contents**

1	I.	Introduction .....	1
2	II.	The Court has equitable jurisdiction .....	1
3	A.	The Court has equitable jurisdiction because Plaintiffs' legal remedies cannot	
4		possibly redress future harms.....	2
5	B.	The Court has equitable jurisdiction over Plaintiffs' equitable claims because legal	
6		remedies are inadequate to redress past harms too. ....	6
7	C.	Defendant improperly requests dismissal "with prejudice." .....	9
8	III.	Plaintiffs adequately allege quasi-contract claims. ....	10
9	IV.	Conclusion .....	12
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

## Table of Authorities

## Cases

3	<i>Ablaza v. Sanofi-Aventis United States LLC</i> ,	
4	2023 U.S. Dist. LEXIS 68391 (N.D. Cal. Apr. 13, 2023) .....	9
5	<i>Am. Life Ins. Co. v. Stewart</i> ,	
6	300 U.S. 203 (1937).....	8, 9
7	<i>Anderson v. Apple Inc.</i> ,	
8	500 F. Supp. 3d 993 (N.D. Cal. 2020) .....	7, 9
9	<i>Andino v. Apple, Inc.</i> ,	
10	2021 U.S. Dist. LEXIS 76011 (E.D. Cal. Apr. 20, 2021).....	3
11	<i>Brooks v. Thomson Reuters Corp.</i> ,	
12	2021 U.S. Dist. LEXIS 154093 (N.D. Cal. Aug. 16, 2021).....	3
13	<i>California v. Altus Fin.</i> ,	
14	36 Cal. 4th 1284 (Cal. 2005).....	5
15	<i>Chaplin v. Walmart, Inc.</i> ,	
16	2023 U.S. Dist. LEXIS 132648 (N.D. Cal. May 25, 2023) .....	4, 10
17	<i>Chebul v. Tuft &amp; Needle, LLC</i> ,	
18	2024 U.S. Dist. LEXIS 226100 (C.D. Cal. Oct. 9, 2024) .....	7, 8, 9
19	<i>Clark v. Eddie Bauer LLC</i> ,	
20	2024 U.S. App. LEXIS 1066 (9th Cir. Jan. 17, 2024) .....	4
21	<i>Davidson v. Kimberly-Clark Corp.</i> ,	
22	889 F.3d 956 (9th Cir. 2018).....	2, 3
23	<i>Elgindy v. AGA Serv. Co.</i> ,	
24	2021 U.S. Dist. LEXIS 61269 (N.D. Cal. Mar. 29, 2021).....	8
25	<i>Fitzgerald et al. v. The Shade Store LLC</i> ,	
26	Case No. 2:23-cv-01435-RSM (W.D. Wash.) .....	12
27	<i>French v. Banana Republic LLC</i> ,	
28	2024 U.S. Dist. LEXIS 200279 (N.D. Cal. Nov. 4, 2024).....	8

1	<i>Freund v. HP, Inc.</i> ,	
2	2023 U.S. Dist. LEXIS 139822 (N.D. Cal. Aug. 10, 2023).....	5
3	<i>Gamez v. Toyota Motor Sales, U.S.A., Inc.</i> ,	
4	2024 U.S. Dist. LEXIS 3792 (E.D. Cal. Jan. 5, 2024).....	2
5	<i>Gonzalez v. Childs. Place, Inc.</i> ,	
6	2024 U.S. Dist. LEXIS 213358 (C.D. Cal. Nov. 21, 2024).....	6
7	<i>Gumner v. Pepsico, Inc.</i> ,	
8	2023 U.S. Dist. LEXIS 214510 (C.D. Cal. Nov. 29, 2023).....	10
9	<i>Guzman v. Polaris Industries, Inc.</i> ,	
10	49 F.4th 1308 (9th Cir. 2022) .....	3, 5, 6, 10
11	<i>Haas v. Travelex Ins. Servs.</i> ,	
12	555 F. Supp. 3d 970 (C.D. Cal. 2021) .....	5
13	<i>In re Finisar Corp. Deriv. Litig.</i> ,	
14	2012 U.S. Dist. LEXIS 97807 (N.D. Cal. July 12, 2012).....	8
15	<i>In re PFA Ins. Mktg. Litig.</i> ,	
16	696 F. Supp. 3d 788 (N.D. Cal. 2021) .....	8
17	<i>Johnson v. Trumpet Behavioral Health, LLC</i> ,	
18	2022 U.S. Dist. LEXIS 3706 (N.D. Cal. Jan. 7, 2022) .....	6
19	<i>Junhan Jeong v. Nexo Fin. LLC</i> ,	
20	2022 U.S. Dist. LEXIS 10089 (N.D. Cal. Jan. 19, 2022) .....	6
21	<i>Kaaron v. Warren v. Whole Foods Mkt. Cal., Inc.</i> ,	
22	2022 U.S. Dist. LEXIS 120865 (N.D. Cal. July 8, 2022).....	3
23	<i>Krueger v. Wyeth, Inc.</i> ,	
24	396 F. Supp. 3d 931 (S.D. Cal. 2019).....	7
25	<i>Kryzhanovskiy v. Amazon.com Servs.</i> ,	
26	2022 U.S. Dist. LEXIS 115025 (E.D. Cal. June 28, 2022).....	4
27	<i>Linton v. Axcess Fin. Servs.</i> ,	
28	2023 U.S. Dist. LEXIS 113669 (N.D. Cal. June 30, 2023) .....	3, 4

1	<i>Makaeff v. Trump Univ., LLC,</i>	
2	309 F.R.D. 631 (S.D. Cal. 2015).....	7
3	<i>Meza v. Coty, Inc.,</i>	
4	2023 U.S. Dist. LEXIS 71163 (N.D. Cal. Apr. 24, 2023) .....	6
5	<i>Mier v. CVS Pharm., Inc.,</i>	
6	2021 U.S. Dist. LEXIS 76737 (C.D. Cal. Mar. 22, 2021) .....	5
7	<i>Murphy v. Olly Pub. Ben. Corp.,</i>	
8	651 F. Supp. 3d 1111 (N.D. Cal. 2023) .....	8
9	<i>Nacarino v. Chobani, LLC,</i>	
10	2021 U.S. Dist. LEXIS 149153 (N.D. Cal. Aug. 9, 2021).....	3
11	<i>Ostrovskaya v. St. John Knits, Inc.,</i>	
12	2022 U.S. Dist. LEXIS 100861 (C.D. Cal. Mar. 31, 2022) .....	9
13	<i>Philips Med. Capital, LLC v. Medical Insights Diagnostics Ctrs., Inc.,</i>	
14	471 F. Supp. 2d 1035 (N.D. Cal. 2007) .....	11
15	<i>Retail Prop. Trust v. United Bd. Of Carpenters &amp; Joiners of Am.,</i>	
16	768 F.3d 938 (9th Cir. 2014).....	11
17	<i>Rice v. Kimberly-Clark Corp.,</i>	
18	2022 U.S. Dist. LEXIS 203355 (E.D. Cal. Nov. 7, 2022) .....	4
19	<i>Rodriguez v. Equal Exch., Inc.,</i>	
20	2024 U.S. Dist. LEXIS 58982 (S.D. Cal. Mar. 31, 2024).....	10
21	<i>Sanchez v. Sams West, Inc.,</i>	
22	2022 U.S. Dist. LEXIS 102560 (C.D. Cal. Mar. 8, 2022) .....	3
23	<i>Sonner v. Premiere Nutrition Corp.,</i>	
24	971 F.3d 834 (9th Cir. 2020).....	passim
25	<i>Steen v. Am. Nat'l Ins. Co.,</i>	
26	2022 U.S. Dist. LEXIS 116406 (C.D. Cal. June 30, 2022) .....	7
27	<i>Steen v. Am. Nat'l Ins. Co.,</i>	
28	609 F. Supp. 3d 1066 (C.D. Cal. 2022) .....	5

1	<i>Zeiger v. WellPet LLC,</i>	
2	526 F. Supp. 3d 652 (N.D. Cal. 2021) .....	3, 4
3	<b>Statutes</b>	
4	Cal. Bus. & Prof. Code § 17501 .....	8
5	Cal. Bus. & Profs. Code § 17205 .....	6
6	Civ. Code § 1780 .....	1
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1     **I. Introduction.**

2                 In this case, Plaintiffs allege that Defendant The Shade Store deceptively advertises  
 3 “discounts” for its products, when in reality the discounts persist and Defendant’s products are  
 4 consistently available for less than the advertised regular prices. They assert claims under  
 5 California’s False Advertising Law, Unfair Competition Law, and Consumer Legal Remedies Act, as  
 6 well as several common law claims including quasi-contract. They seek injunctive relief and  
 7 equitable restitution for their FAL, UCL, and quasi-contract claims, damages for their other common  
 8 law claims, and injunctive relief, restitution, and damages for their CLRA claims.

9                 In Defendant’s third and now fourth motion to dismiss, it seeks to dismiss Plaintiffs’ claims  
 10 seeking equitable relief (the UCL, FAL, and quasi-contract claims, and the CLRA claims in part).  
 11 Defendant argues that Plaintiffs have not sufficiently pleaded that they lack an adequate remedy at  
 12 law, and so cannot pursue claims seeking restitution or injunctive relief. But Plaintiffs provide  
 13 thorough allegations detailing why money damages through their legal claims do not provide an  
 14 adequate remedy, and why injunctive relief and restitution are needed. And, in the event that the  
 15 Court finds otherwise, the Court should heed the instruction from the Ninth Circuit and dismiss the  
 16 equitable relief claims without prejudice so that Plaintiffs can refile their equitable relief claims in  
 17 state court.

18                 Defendant also moves to dismiss Plaintiffs’ quasi-contract claims. Defendant’s only  
 19 additional argument relies on attacking the truth of Plaintiffs’ price premium allegations, which  
 20 should be rejected at the pleading stage, where factual allegations must be taken as true and  
 21 reasonable inferences must be drawn in Plaintiffs’ favor.

22     **II. The Court has equitable jurisdiction.**

23                 Plaintiffs seek equitable relief under the UCL, the FAL, the CLRA, and through their quasi-  
 24 contract claim.<sup>1</sup> According to Defendant, Plaintiffs “have an adequate remedy at law: damages.”  
 25 Mot. at 6. Defendant claims, as a result, that the Court lacks equitable jurisdiction under *Sonner v.*  
 26

---

27                 <sup>1</sup> The CLRA provides for both equitable and legal relief. Civ. Code § 1780. Accordingly, if  
 28 the Court concludes it lacks equitable jurisdiction, Plaintiffs’ CLRA claims should not be dismissed  
 because Plaintiffs can and do pursue legal remedies under the CLRA. See 3AC ¶¶ 118-122 (plaintiffs  
 seek monetary damages under the CLRA).

1      *Premiere Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), and its progeny, and that Plaintiffs’  
 2      equitable claims should be dismissed with prejudice.

3           Defendant’s arguments fail on multiple levels. The Court has equitable jurisdiction because  
 4      damages cannot remedy future harms from ongoing violations; an injunction is required for that. The  
 5      Court also has equitable jurisdiction because the legal remedies Plaintiffs can pursue do not  
 6      adequately address past harms; equitable remedies like restitution are required for that. Moreover, the  
 7      proper result when a federal court lacks equitable jurisdiction is not dismissal “with prejudice”  
 8      because Plaintiffs can reassert their equitable claims in California state court, where the federal  
 9      equitable jurisdiction doctrine does not apply.

10        **A.      The Court has equitable jurisdiction because Plaintiffs’ legal remedies cannot  
 11           possibly redress future harms.**

12           For each of their equitable claims, Plaintiffs seek prospective injunctive relief prohibiting  
 13      Defendant from continuing to engage in its deceptive price advertising.<sup>2</sup> Third Amended Complaint  
 14      (“3AC”) ¶¶ 101, 117, 140, 174. In *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956 (9th Cir. 2018),  
 15      the Ninth Circuit examined what a consumer is required to allege, when asserting claims under  
 16      California’s consumer protection laws in federal court, to seek an injunction. “[A] previously  
 17      deceived consumer may have [Article III] standing to seek an injunction against false advertising or  
 18      labeling . . . because the consumer may suffer an ‘actual and imminent, not conjectural or  
 19      hypothetical’ threat of future harm. . . . [This may take the form of] the consumer’s plausible  
 20      allegations that she will be unable to rely on the product’s advertising or labeling in the future, and so  
 21      will not purchase the product although she would like to.” *Id.* at 969-70 (citations omitted). Plaintiffs  
 22      here allege that they are unable to rely on Defendant’s advertising or labeling in the future, and so  
 23      they cannot purchase products they would otherwise like to, satisfying *Davidson*. 3AC ¶¶ 58, 61, 64,  
 24      68, 72, 82. “[L]egal damages are inadequate to remedy the “future harm that Plaintiffs face” because  
 25      “without an injunction, Plaintiff[s] have] no realistic way to know which—if any—of Defendant’s

---

27                          <sup>2</sup> Federal courts in California have allowed plaintiffs to pursue injunctive relief under quasi-  
 28      contract claims. See *Gomez v. Toyota Motor Sales, U.S.A., Inc.*, 2024 U.S. Dist. LEXIS 3792, at \*55  
 (E.D. Cal. Jan. 5, 2024) (denying “defendants’ motion to dismiss plaintiffs’ unjust enrichment claim  
 seeking an injunction”). Defendant cites no case holding to the contrary.

1 regular prices, discounts, and sales are not false or deceptive. Thus, they are unable to rely on  
 2 Defendant's advertising in the future." *Id.* ¶ 82. Defendant does not argue in its Motion that  
 3 *Davidson*'s requirements are not met.

4 Despite Plaintiffs' alleging precisely what the Ninth Circuit held was sufficient to pursue an  
 5 injunction in a consumer protection class action case in *Davidson*, Defendant argues more is  
 6 required. Defendant seeks to apply *Sonner*'s equitable jurisdiction requirement to injunctive relief  
 7 and argues that money damages adequately remedy the future harms that would be addressed by an  
 8 injunction. Mot. at 10. The Ninth Circuit has never endorsed Defendant's argument—indeed, neither  
 9 *Sonner* nor *Guzman v. Polaris Industries, Inc.*, 49 F.4th 1308 (9th Cir. 2022) (the other recent Ninth  
 10 Circuit decision addressing equitable jurisdiction), considered injunctive relief at all. See *Sonner*, 971  
 11 F.3d at 842 ("Injunctive relief is not at issue."). And while Defendant cites a handful of district courts  
 12 that overread *Sonner* (most shortly after *Sonner* was decided) to bar injunctive relief when money  
 13 damages "may" remedy future harms, "[m]any other courts post-*Sonner*, however, have held that  
 14 '[m]oney damages are an inadequate remedy for [the] future harm' only remediable by injunctive  
 15 relief" because money damages do not remedy prospective harm. *Linton v. Axcess Fin. Servs.*, 2023  
 16 U.S. Dist. LEXIS 113669, at \*6 (N.D. Cal. June 30, 2023) (first alteration added); *Zeiger v. WellPet*  
 17 *LLC*, 526 F. Supp. 3d 652, 687 (N.D. Cal. 2021) ("[M]onetary damages for past harm are an  
 18 inadequate remedy for the future harm that an injunction under California consumer protection law is  
 19 aimed at."); *Andino v. Apple, Inc.*, 2021 U.S. Dist. LEXIS 76011, at \*15 (E.D. Cal. Apr. 20, 2021)  
 20 ("Money damages are an inadequate remedy for future harm, as they will not prevent Defendant from  
 21 continuing the allegedly deceptive practice."); *Brooks v. Thomson Reuters Corp.*, 2021 U.S. Dist.  
 22 LEXIS 154093, at \*34-35 (N.D. Cal. Aug. 16, 2021) (same); *Sanchez v. Sams West, Inc.*, 2022 U.S.  
 23 Dist. LEXIS 102560, at \*10 (C.D. Cal. Mar. 8, 2022) ("As a general matter, legal damages are  
 24 typically inadequate to remedy the future harms from ongoing violations."); *Kaaron v. Warren v.*  
 25 *Whole Foods Mkt. Cal., Inc.*, 2022 U.S. Dist. LEXIS 120865, at \*26 (N.D. Cal. July 8, 2022)  
 26 ("[B]ecause the injunctive relief that Plaintiffs request 'is prospective' and their 'remedy at law,  
 27 damages, is retrospective,' their claim for an injunction does not appear to be barred by *Sonner*.");  
 28 *Nacarino v. Chobani, LLC*, 2021 U.S. Dist. LEXIS 149153, at \*35 (N.D. Cal. Aug. 9, 2021)

1 (“[C]ourts have rightly emphasized that ‘retrospective damages are not an adequate remedy for th[e]  
 2 prospective harm’ that injunctions are designed to prevent.”); *Kryzhanovskiy v. Amazon.com Servs.*,  
 3 2022 U.S. Dist. LEXIS 115025, at \*11 (E.D. Cal. June 28, 2022) (*Sonner* “does not bar the issuance  
 4 of an injunction to prevent *future* harms.”); *Rice v. Kimberly-Clark Corp.*, 2022 U.S. Dist. LEXIS  
 5 203355, at \*9-10 (E.D. Cal. Nov. 7, 2022) (same); *Chaplin v. Walmart, Inc.*, 2023 U.S. Dist. LEXIS  
 6 132648, at \*16-17 (N.D. Cal. May 25, 2023) (same).

7       As the latter set of cases explain: “simply having *any* remedy at law is not sufficient to  
 8 foreclose equitable relief; instead the relief must be *adequate*.’ [Citation]. Therefore, while the  
 9 availability of monetary damages forecloses certain types of injunctive relief, including specific  
 10 performance of a contract, ‘California’s consumer protection laws permit courts to issue injunctions  
 11 that serve different purposes and remedy different harms than retrospective monetary damages.’”  
 12 *Linton*, 2023 U.S. Dist. LEXIS 113669, at \*6-7 (quoting *Zeiger*, 526 F. Supp. 3d at 687). Plaintiffs  
 13 seek injunctive relief specifically to remedy the prospective, future harms caused by Defendant’s  
 14 continuing violations of California’s consumer protection laws. *See* 3AC ¶ 82. Plaintiffs cannot rely  
 15 on Defendant’s advertising in the future, and so cannot purchase products they otherwise would like  
 16 to purchase. *Id.* Money damages cannot remedy that, and Defendant makes no effort to explain how  
 17 they could.

18       In *Clark v. Eddie Bauer LLC*, 2024 U.S. App. LEXIS 1066 (9th Cir. Jan. 17, 2024), a Ninth  
 19 Circuit panel considered this issue in the context of a fake discount case like this one in an  
 20 unpublished opinion. The Court of Appeals found that “[t]he injunctive relief requested in  
 21 [plaintiff’s] complaint was to . . . prevent [defendant] from engaging in misleading pricing schemes  
 22 in the *future* . . . [so the] injunctive relief does not seek ‘the same amount of money for the exact  
 23 same harm’ that [plaintiff] had suffered in the past.” *Id.* at \*7. The *Clark* panel considered the same  
 24 argument that Defendant makes here—“that both ‘past and future harms . . . are financial and both  
 25 can be cured by the monetary damages’”—and rejected it, finding that the district court committed  
 26 reversible error. *Id.* at \*7-8; compare with Mot. at 10-11 (arguing monetary damages can cure  
 27 Plaintiffs’ future harms). Thus, Defendant’s injunctive-relief arguments have been repeatedly  
 28

1 rejected by California federal courts, including by a Ninth Circuit panel in a fake discount case like  
 2 this one, and these arguments should be rejected again here.

3 Moreover, as several courts in this circuit have recognized, because the Court has equitable  
 4 jurisdiction over Plaintiffs' equitable claims due to availability of injunctive relief, the Court also has  
 5 equitable jurisdiction over Plaintiffs' request for other equitable relief like restitution for those same  
 6 claims. “[E]quity jurisdiction does not relate to the power of the court to hear and determine a  
 7 controversy but relates to whether it ought to assume the jurisdiction and decide the cause.” *Guzman*,  
 8 49 F.4th at 1314 (internal quotes and citation omitted). When the Court already must “decide the  
 9 cause” because some form of equitable relief is available in federal court (here, an injunction) then it  
 10 “ought to” assume equitable jurisdiction over the entire claim, including the portions of the claims  
 11 seeking relief like equitable restitution.

12 *Freund v. HP, Inc.*, 2023 U.S. Dist. LEXIS 139822 (N.D. Cal. Aug. 10, 2023) is instructive.  
 13 There, the court rejected the defendant’s attempt to strike the plaintiffs’ claims seeking equitable  
 14 restitution when “Plaintiffs[] have shown that the Court has equitable jurisdiction over the claims  
 15 based on Plaintiffs’ request for injunctive relief.” *Id.* at \*24-25. Other courts have applied the same  
 16 reasoning. *See Steen v. Am. Nat'l Ins. Co.*, 609 F. Supp. 3d 1066, 1075-76 (C.D. Cal. 2022) (denying  
 17 motion to dismiss UCL claim for restitution after concluding that the court had equitable jurisdiction  
 18 to hear UCL claim for injunction); *Haas v. Travelex Ins. Servs.*, 555 F. Supp. 3d 970, 976 (C.D. Cal.  
 19 2021) (denying motion for judgment on the pleadings on same basis); *see also Mier v. CVS Pharm., Inc.*, 2021 U.S. Dist. LEXIS 76737, at \*33-37 (C.D. Cal. Mar. 22, 2021) (finding equitable  
 21 jurisdiction based on request for injunction and denying motion to dismiss UCL and FAL claims  
 22 seeking restitution). This outcome makes sense. It is far more efficient for the Court to exercise  
 23 jurisdiction over all parts of an equitable claim when it has jurisdiction over any, as in *Freund*,  
 24 because the alternative is inefficient piecemeal litigation across multiple courts that address identical  
 25 issues under the same laws. Indeed, should the Court find that Plaintiffs may not pursue restitution or  
 26 other equitable remedies in federal court and dismisses those portions of Plaintiffs’ claims, Plaintiffs  
 27 can refile in state court, where under California law they need not show an inadequate remedy at law  
 28 to recover under the UCL and FAL. *California v. Altus Fin.*, 36 Cal. 4th 1284, 1303 (Cal. 2005)

1 (“[T]he fact that there are alternative remedies under a specific statute does not preclude a UCL  
 2 [equitable] remedy, unless the statute itself provides that the remedy is to be exclusive.” (citing Cal.  
 3 Bus. & Profs. Code § 17205)). Such duplicative litigation based on the same underlying facts and  
 4 alleging violations of the same statutes—but seeking different relief—is inefficient and needlessly  
 5 risks inconsistent rulings.

6       Thus, the Court has jurisdiction to hear Plaintiffs’ equitable claims for injunctive relief  
 7 through their quasi-contract, CLRA, UCL, and FAL claims. And, because the Court has equitable  
 8 jurisdiction over those claims, Plaintiffs may pursue all equitable remedies available, including  
 9 restitution.

10      **B.     The Court has equitable jurisdiction over Plaintiffs’ equitable claims because  
 11            legal remedies are inadequate to redress past harms too.**

12       The Court also has equitable jurisdiction because Plaintiffs have sufficiently alleged that  
 13 available legal remedies do not adequately remedy past harms. Neither *Sonner* nor *Guzman*  
 14 considered equitable jurisdiction at the pleading stage; *Sonner* was decided on the eve of trial and  
 15 *Guzman* on summary judgment. So courts in this Circuit have arrived at the consensus that “*Sonner*  
 16 provides limited guidance for pleading claims for legal and equitable relief” and they “do not  
 17 consider *Sonner* to impose strict requirements at the pleading stage.” *See Junhan Jeong v. Nexo Fin.*  
 18 *LLC*, 2022 U.S. Dist. LEXIS 10089, at \*92 (N.D. Cal. Jan. 19, 2022) (collecting cases); *Gonzalez v.*  
 19 *Childs Place, Inc.*, 2024 U.S. Dist. LEXIS 213358, at \*25-27 (C.D. Cal. Nov. 21, 2024) (collecting  
 20 cases). “[I]f a plaintiff pleads that she lacks an adequate legal remedy, *Sonner* will rarely (if ever)  
 21 require more this early in the case.” *Johnson v. Trumpet Behavioral Health, LLC*, 2022 U.S. Dist.  
 22 LEXIS 3706, at \*9-10 (N.D. Cal. Jan. 7, 2022); *Meza v. Coty, Inc.*, 2023 U.S. Dist. LEXIS 71163, at  
 23 \*29 (N.D. Cal. Apr. 24, 2023) (Cousins, J.) (denying a *Sonner* challenge at the motion to dismiss  
 24 stage as “premature” and recognizing that “plaintiffs can allege [equitable] claims in the alternative  
 25 [to legal claims] at the pleading stage”). Here, each Plaintiff alleged that they lack an adequate legal  
 26 remedy and thus require equitable remedies like restitution, 3AC ¶ 78, which satisfies *Sonner* at the  
 27 pleading stage, *Chebul v. Tuft & Needle, LLC*, 2024 U.S. Dist. LEXIS 226100, at \*7-9 (C.D. Cal.  
 28

1 Oct. 9, 2024) (denying *Sonner* challenge at the pleading stage based on allegations materially similar  
 2 to those Plaintiffs allege here).

3 Plaintiffs go further, and allege how legal damages are inadequate and why equitable relief  
 4 for past harms is needed. To begin, a legal remedy is inadequate if “the equitable restitution  
 5 [Plaintiffs’] request would go beyond the damages available.” *Anderson v. Apple Inc.*, 500 F. Supp.  
 6 3d 993, 1009 (N.D. Cal. 2020); *Steen v. Am. Nat'l Ins. Co.*, 2022 U.S. Dist. LEXIS 116406, at \*17  
 7 (C.D. Cal. June 30, 2022) (*Sonner* does not foreclose seeking equitable relief unless “completely  
 8 duplicative of the plaintiff’s legal claims”). In other words, damages are inadequate where the  
 9 measure of damages (Plaintiffs’ loss) differs from the measure of restitution (Defendant’s unjust  
 10 gain).

11 Here, the money damages available for Plaintiffs’ claims differ from the measure of  
 12 restitution. For their legal claims, Plaintiffs seek “expectation damages,” “punitive damages,” “and/or  
 13 damages measured by the price premium charged to Plaintiffs and the” class or subclass. 3AC  
 14 ¶¶ 118-122 (CLRA), 151 (breach of contract), 159 (breach of express warranty), 167 (breach of  
 15 implied warranty), 184 (intentional misrepresentation).<sup>3</sup> Damages are measured by the harm to  
 16 Plaintiffs and the class, and so a full refund is available through money damages only if the products  
 17 purchased were worthless. *See Chebul*, 2024 U.S. Dist. LEXIS 226100, at \*7; 3AC ¶ 80. That is not  
 18 the case here, where Plaintiffs and the class received functional window treatments (albeit window  
 19 treatments not worth the price paid and sold at an inflated price).

20 But a full refund is permitted through equity when a consumer only purchased a product from  
 21 Defendant in the first place because of Defendant’s deception or fraud. 3AC ¶ 80; *e.g., Makaeff v.*  
*Trump Univ., LLC*, 309 F.R.D. 631, 637-38 (S.D. Cal. 2015) (rejecting argument that a full refund is  
 23 available only when the product purchased is worthless, instead recognizing that “the court may  
 24 exercise its broad discretion to craft a restitutive remedy that will” “return the plaintiff to the  
 25 status quo”); *Krueger v. Wyeth, Inc.*, 396 F. Supp. 3d 931, 953-54 (S.D. Cal. 2019) (denying  
 26 summary judgment on full-refund restitutive theory when there was “a genuine issue of material  
 27

---

28 <sup>3</sup> Contrary to Defendant’s brief, Mot. at 6, Plaintiffs do not allege that they seek a full refund  
 through their legal claims.

fact as to whether a reasonable consumer would have purchase[d] Defendants' products" absent misrepresentations). Other courts in this Circuit, including courts considering fake discount claims like those Plaintiffs bring here, have rejected *Sonner* based on materially similar allegations. *See, e.g., Murphy v. Olly Pub. Ben. Corp.*, 651 F. Supp. 3d 1111, 1129 (N.D. Cal. 2023) (rejecting *Sonner* challenge based on availability of full refund through restitution); *Chebul*, 2024 U.S. Dist. LEXIS 226100, at \*7-9 (same in fake discount case); *see also French v. Banana Republic LLC*, 2024 U.S. Dist. LEXIS 200279, 6-7 (N.D. Cal. Nov. 4, 2024) (rejecting *Sonner* argument at pleading stage, because "[t]he right time to work" out whether "plaintiffs would ultimately be able to recover a full refund" is "either at summary judgment or at the pretrial conference").

Additionally, full refund restitution is available through rescission. Rescission is an equitable remedy available under California's consumer protection statutes. *In re PFA Ins. Mktg. Litig.*, 696 F. Supp. 3d 788, 818-19 (N.D. Cal. 2021). Through rescission, the Court can "cancel or annul" the parties' contract, returning the parties to the status quo. *In re Finisar Corp. Deriv. Litig.*, 2012 U.S. Dist. LEXIS 97807, at \*69-70 (N.D. Cal. July 12, 2012). The result of rescission here is that Plaintiffs would have the option to receive a full refund in restitution in exchange for returning the products they purchased from Defendant. No analogous remedy, let alone an identical one, is available in law.

A legal remedy is also inadequate if the legal claims "require proof of conduct beyond that which must be shown to establish liability under the [equitable claims]." *Elgindy v. AGA Serv. Co.*, 2021 U.S. Dist. LEXIS 61269, at \*48 (N.D. Cal. Mar. 29, 2021) (citing *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937)). Here, Plaintiffs' legal claims require additional proof beyond their equitable claims. For instance, "Plaintiffs' FAL claim under Section 17501 (an equitable claim) is predicated on a specific statutory provision, which prohibits advertising merchandise using a former price if that price was not the prevailing market price within the past 90 days." 3AC ¶ 79 (citing Cal. Bus. & Prof. Code § 17501). "Plaintiffs may be able to prove these more straightforward factual elements, and thus prevail under the FAL, while not being able to prove one or more elements of their legal claims." *Id.*

1           *Ostrovskaya v. St. John Knits, Inc.*, 2022 U.S. Dist. LEXIS 100861, at \*11 (C.D. Cal. Mar.  
 2 31, 2022), another case involving fake discounts, is instructive. There, like here, the plaintiff  
 3 challenged the defendant’s deceptive discounts and sought equitable restitution and damages. The  
 4 court rejected the defendant’s attempt to dismiss the equitable claims, and distinguished cases  
 5 alleging fake discounts from other types of consumer class actions. The court explained that section  
 6 17501 involves “straightforward factual elements,” and held that the plaintiff may be able to show  
 7 such elements and “thus prevail under the FAL,” without being able “to convince a jury of the more  
 8 subjective claim that ‘members of the public are likely to be deceived,’” as required by the CLRA.  
 9 *Id.* at \*12; *see also Chebul*, 2024 U.S. Dist. LEXIS 226100, at \*7-8 (same, in another fake discount  
 10 case). The same reasoning applies here.

11           Finally, a legal remedy is inadequate if it is not as “equally prompt and certain and in other  
 12 ways efficient” as an equitable remedy. *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937) (“A  
 13 remedy at law does not exclude one in equity unless it is equally prompt and certain and in other  
 14 ways efficient.”). At the pleading stage, “it is sufficient for Plaintiffs to allege that restitution ‘would  
 15 be more certain . . . than the legal remedies they request.’” *Ablaza v. Sanofi-Aventis United States  
 16 LLC*, 2023 U.S. Dist. LEXIS 68391, at \*6 (N.D. Cal. Apr. 13, 2023) (quoting *Anderson v. Apple Inc.*,  
 17 500 F. Supp. 3d 993, 1009 (N.D. Cal. 2020)). Plaintiffs allege that their legal remedies are not  
 18 “equally prompt or otherwise efficient” because resolution of their legal claims may be delayed (or  
 19 less efficient) by scheduling a jury trial and trying the case before a jury. 3AC ¶ 81.

20           Accordingly, because Plaintiffs’ equitable remedies go beyond available legal remedies,  
 21 because their legal claims require different proof that may be more difficult to satisfy, and because  
 22 resolution of Plaintiffs’ claims will not be equally prompt or efficient, Plaintiffs’ claims for equitable  
 23 restitution are not foreclosed by *Sonner*.

24           **C. Defendant improperly requests dismissal “with prejudice.”**

25           Defendant repeatedly asks the Court to commit reversible error and ignore binding Ninth  
 26 Circuit precedent by dismissing Plaintiffs’ equitable relief claims “with prejudice.” *See Mot.* at 1;  
 27 *Dkt.* 99-1 (proposed order). As explained above, the Court has equitable jurisdiction over all  
 28 Plaintiffs’ equitable claims. But if the Court disagrees, any dismissal of Plaintiffs’ equitable claims

1 must be without prejudice. The Ninth Circuit, recognizing that California state courts are not bound  
 2 by *Sonner*'s equitable jurisdiction requirement (which is based on federal common law), has  
 3 instructed district courts lacking equitable jurisdiction to “dismiss [equitable claims] without  
 4 prejudice to refiling the same claim[s] in state court” because “a California court might allow  
 5 [plaintiffs] to pursue [their equitable] claim[s].” *Guzman*, 49 F.4th at 1314-15 (reversing district  
 6 court’s dismissal with prejudice and remanding with instructions to dismiss without prejudice); *see,*  
 7 *e.g.*, *Gumner v. Pepsico, Inc.*, 2023 U.S. Dist. LEXIS 214510, at \*13 (C.D. Cal. Nov. 29, 2023)  
 8 (dismissing plaintiff’s UCL claim for restitution without prejudice “should he wish to refile it in state  
 9 court”); *Rodriguez v. Equal Exch., Inc.*, 2024 U.S. Dist. LEXIS 58982, at \*27 (S.D. Cal. Mar. 31,  
 10 2024) (dismissing plaintiff’s “request for restitution” without “prejudice to being raised in state  
 11 court”); *Chaplin v. Walmart, Inc.*, 2023 U.S. Dist. LEXIS 132648, at \*18 n.5 (N.D. Cal. May 25,  
 12 2023) (collecting cases where courts “cited [the Ninth Circuit’s decision in] *Guzman* and dismissed []  
 13 restitution claims without prejudice to be refiled in state court.”).

### 14 **III. Plaintiffs adequately allege quasi-contract claims.**

15 In its Order on Defendant’s Motion to Dismiss Plaintiffs’ First Amended Complaint, the  
 16 Court dismissed Plaintiffs’ quasi-contract claims with leave to amend because the Court found that  
 17 (1) Plaintiff did not adequately allege their unjust enrichment claims in the alternative; and (2)  
 18 Plaintiff did not adequately explain how Defendant’s price discounts resulted in Defendant’s  
 19 products being sold for a price premium. Dkt. 69 at 16-17. Plaintiffs cured both of these issues in the  
 20 Second Amended Complaint and the Third Amended Complaint.<sup>4</sup>

21 In the operative Complaint, Plaintiffs allege that they “bring this [quasi-contract] claim in the  
 22 alternative to their legal claims.” 3AC ¶ 170. They also allege, “[i]n the alternative only), due to  
 23 Defendant’s misrepresentations, its contracts with Plaintiffs are void or voidable.” *Id.* ¶ 171; *see also*  
 24 *id.* ¶¶ 57, 60, 63, 66, 70 (alleging Plaintiffs’ reliance on Defendant’s misrepresentations); *Philips*  
 25 *Med. Capital, LLC v. Medical Insights Diagnostics Ctrs., Inc.*, 471 F. Supp. 2d 1035, 1044 (N.D.  
 26

---

27 <sup>4</sup> The Court did not address Defendant’s quasi-contract arguments in its Order granting in part  
 28 and denying in part Defendant’s Motion to Dismiss Plaintiffs’ Second Amended Complaint (Dkt.  
 89). Defendant reraises those arguments in its latest Motion. *See Mot.* at 11-12.

1 Cal. 2007) (explaining fraud renders contract voidable). At this stage, these allegations satisfy  
 2 Plaintiffs' pleading burden to sustain a quasi-contract/unjust enrichment cause of action in the  
 3 alternative, and Defendant does not argue otherwise. *See Mot.* at 11-12.

4 Plaintiffs also amended their complaint to further expand on their price premium allegations.  
 5 The Third Amended Complaint explains how Defendant's misrepresentations allow it to charge a  
 6 price premium: "Defendant's advertisements artificially increase consumer demand for Defendant's  
 7 Products. This puts upward pressure on the prices that Defendant can charge for its Products. As a  
 8 result, Defendant can charge a price premium for its Products, that it would not be able to charge  
 9 absent the misrepresentations." 3AC ¶ 55; *see id.* ¶¶ 57, 60, 63, 67, 71 (alleging that Plaintiffs each  
 10 paid a price premium because of the increased demand caused by Defendant's deceptive price  
 11 advertising); *id.* ¶ 172. Because "Plaintiffs and the class paid more for the Products they bought than  
 12 they otherwise would have" absent Defendant's misrepresentations, *id.* ¶ 55, "Defendant received a  
 13 direct and unjust benefit from its false and misleading advertising at Plaintiffs' and the class's  
 14 expense," *id.* ¶ 173. And, though not required at this stage, Plaintiffs cite empirical support for these  
 15 allegations. *Id.* ¶¶ 52-54 & n.1-3 (citing articles and surveys demonstrating that discounts drive  
 16 demand for consumer goods).<sup>5</sup>

17 Defendant attempts to cast Plaintiffs' price premium allegations as speculation and attacks  
 18 the truth of the allegations. Mot. at 12. But Plaintiffs' price premium allegations are not speculation;  
 19 these are factual allegations supported by economic theory and literature that must be accepted as  
 20 true at the pleading stage. *Retail Prop. Trust v. United Bd. Of Carpenters & Joiners of Am.*, 768 F.3d  
 21 938, 945 (9th Cir. 2014) (When reviewing a 12(b)(6) motion, a court "must accept as true all factual  
 22 allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party."). A  
 23  
 24  
 25  
 26

---

27       <sup>5</sup> Although not at issue in this Motion, Plaintiffs have also served their expert reports in  
 28 support of class certification, including an expert report describing in great detail how Plaintiffs plan  
 to measure and calculate the price premium attributable to Defendant's fake discount representations.

1 motion to dismiss is not the proper medium for challenging the merits of Plaintiffs' price premium  
 2 theory, as Defendant attempts here.<sup>6</sup>

3 Defendant made these same arguments challenging the identical price premium allegations in  
 4 a motion to dismiss in *Fitzgerald et al. v. The Shade Store LLC*, Case No. 2:23-cv-01435-RSM  
 5 (W.D. Wash.), another fake discount case against The Shade Store based on materially similar  
 6 facts.<sup>7</sup> In *Fitzgerald*, the plaintiffs alleged in the then-operative complaint that "Defendant's  
 7 advertisements artificially increase consumer demand for Defendant's Products. This puts upward  
 8 pressure on the prices that Defendant can charge for its Products. As a result, Defendant can charge a  
 9 price premium for its Products, that it would not be able to charge absent the misrepresentations  
 10 described above." First Amended Complaint, *Fitzgerald*, Case No. 2:23-cv-01435-RSM (Dkt. 29)  
 11 ¶ 49; compare with 3AC ¶ 55. The *Fitzgerald* court rejected Defendant's argument, instead holding  
 12 that Plaintiff Fitzgerald's complaint included "detailed factual allegations explaining" how  
 13 Defendant's misrepresentations create a price premium for its products. *Fitzgerald v. The Shade*  
 14 *Store LLC*, 2024 U.S. Dist. LEXIS 131839, at \*6-7 (W.D. Wash. July 25, 2024) (quoting *Fitzgerald*  
 15 First Amended Complaint). These well-pleaded, "detailed factual allegations," *id.*, must be accepted  
 16 as true here too. So Plaintiffs have adequately pleaded their price premium theory and their unjust  
 17 enrichment claim.

#### 18 **IV. Conclusion.**

19 For the reasons given above, Defendant's fourth Motion to Dismiss should be denied in its  
 20 entirety.

---

21  
 22  
 23  
 24  
 25

26       <sup>6</sup> Defendant argues that Plaintiffs do not allege that it actually charged a price premium. Mot.  
 27 at 12. Defendant ignores Plaintiffs' allegations, where they alleged that Defendant "received a direct  
 28 and unjust benefit" from the price premium for its products due to its deceptive price advertising.  
*See, e.g.*, 3AC ¶¶ 172-73.

7 Plaintiffs' counsel also represent the plaintiffs in the *Fitzgerald* action.

1 Dated: January 31, 2025

Respectfully submitted,

2 By: /s/ Martin Brenner

3 Martin Brenner (Cal. Bar No. 333540)

4 martin@dovel.com

5 Simon Franzini (Cal. Bar No. 287631)

6 simon@dovel.com

7 Grace Bennett (Cal. Bar No. 345948)

8 grace@dovel.com

9 DOVEL & LUNER, LLP

10 201 Santa Monica Blvd., Suite 600

11 Santa Monica, California 90401

12 Telephone: (310) 656-7066

13 Facsimile: (310) 656-7069

14 *Attorneys for Plaintiffs*